

ORIGINAL  
RECEIVED

NOV - 1 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:

Reform of the Interstate  
Access Charge Rules

)  
)  
)  
)  
RM-8356

DOCKET FILE COPY ORIGINAL

OPPOSITION OF  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Genevieve Morelli  
Vice President and  
General Counsel  
COMPETITIVE  
TELECOMMUNICATIONS  
ASSOCIATION  
1140 Connecticut Ave., N.W.  
Suite 220  
Washington, D.C. 20036  
(202) 296-6650

Danny E. Adams  
Jeffrey S. Linder  
WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 429-7000

Its Attorneys

November 1, 1993

No. of Copies rec'd  
List ABCDE

044  
CCB

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY . . . . .	1
II. USTA'S PETITION RESTS ON A MULTITUDE OF FALSE PREMISES . . . . .	4
A. A Description of USTA's Proposal . . . . .	4
B. There Is No Basis for Adopting USTA's Proposal . . . . .	7
1. Crucial Distinctions Between Switched and Special Access Have Important Implications for Access Reform . . . . .	8
2. Further Deregulation Is Not Necessary To Allow the LECs To Compete . . . . .	10
3. Access Competition Is Not An End In Itself . . . . .	12
III. ACCESS REFORM MUST PROMOTE CONTINUED LONG DISTANCE COMPETITION . . . . .	13
IV. CONCLUSION . . . . .	16

NOV.-21 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Reform of the Interstate  
Access Charge Rules

)  
)  
) RM-8356  
)

OPPOSITION OF  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits its Opposition to the above-captioned Petition for Rulemaking filed by the United States Telephone Association ("USTA").<sup>1</sup> CompTel shares the growing consensus -- evidenced by the USTA proposal, the NARUC Access Issues Working Group report, and the Commission's staff report -- that access charge reform should be addressed in a comprehensive manner. It strongly objects, however, to the specific plan put forth by USTA. As discussed herein, USTA's Petition is simply a call for unwarranted and destructive deregulation, in advance of the development of realistic access alternatives and without regard for the deleterious impact on long distance competition and consumers.

I. INTRODUCTION AND SUMMARY

The premise of USTA's Petition is that the Commission's access charge rules have remained essentially static over the

---

<sup>1</sup> Public Notice of USTA's Petition was given by FCC Report No. 1975 (released October 1, 1993).

past ten years, notwithstanding assertedly major changes in the marketplace.<sup>2</sup> USTA decries the "piece-meal" approach it claims the Commission has taken to access issues, and proposes a radical re-working of the access charge regime.<sup>3</sup> Specifically, USTA recommends classifying wire centers into three market categories, depending upon the degree of competition. In all three categories, the LECs would gain tremendously increased pricing and earning flexibility. For example, in the most competitive zone, the LECs would enjoy complete pricing freedom even though customers representing 80 percent of the total demand for access might have no alternative source of supply.

The Commission should deny USTA's proposal. The proposed "reforms" represent yet another effort to gain deregulation that the Commission has properly denied in other proceedings,<sup>4</sup> rendering the plan an untimely and duplicative Petition for Reconsideration. In addition, regardless of its procedural infirmity, USTA's Petition rests on numerous flawed assumptions:

- USTA assumes that the access market is technologically monolithic, with no remaining distinctions between switched and special access. In reality, differences between the retail special access market and wholesale switched access market have significant implications for access reform.

---

<sup>2</sup> Petition at 1, 7-8.

<sup>3</sup> Id. at iii.

<sup>4</sup> See CC Docket Nos. 87-313, 91-213, and 91-141.

- USTA assumes that interstate switched access competition can develop without opening the local telephone market to competition. In reality, true switched access competition is impossible without effective local service competition. As a consequence, additional deregulation of access services would be premature without effective competition at the local level.
- USTA assumes that the LECs need significant additional pricing flexibility in order to respond to emerging access competition. In reality, the Commission already has granted the LECs considerable pricing flexibility, and the measures sought by USTA would restrain competition in the access and long distance markets.
- USTA assumes that access competition is an end in itself. In reality, switched access competition will benefit consumers only to the extent it occurs under conditions that promote continued competition in the retail long distance market.

In contrast to USTA's unrealistic approach, any meaningful proposal for comprehensive access reform must promote entry for both interstate and intrastate services; assure fair long distance, switched access, and local exchange competition; and at bottom, benefit consumers. To this end, CompTel respectfully recommends that such a proposal conform to the following principles:

- The access structure should recognize the relationship between switched access and local competition by deferring deregulation of access rates until there is effective local competition.
- The access structure should not sacrifice robust long distance competition for more limited exchange access competition. To this end, access reform must require that unbundled wholesale access service underlie all interstate and intrastate LEC-provided retail services extending beyond the flat-rate local calling area; all LEC-provided retail services obtain access under the same tariffed terms and conditions as apply to non-LEC retail service providers; volume discounts be strictly

cost-justified to avoid granting an unearned advantage to incumbent providers; and customers be permitted separately to select local and interexchange providers using 1+ presubscription for interLATA and intraLATA services.

- Equal access and unbundling obligations should be extended to the CAPs to assure that CAP customers retain the right to obtain long distance services separately from access or local services.
- Access rates should explicitly identify subsidies and recover contributions in a manner that is competitively neutral.

## II. USTA'S PETITION RESTS ON A MULTITUDE OF FALSE PREMISES.

USTA's Petition proposes to sweep out major elements of the Commission's access charge and price cap rules, based on several assumptions regarding the nature of the access marketplace and the constraints that currently apply to the LECs' pricing of access services. This section of CompTel's Opposition will summarize USTA's proposal, identify the explicit and implicit assumptions underlying its call for radical deregulation, and explain why those assumptions cannot withstand scrutiny.

### A. A Description of USTA's Proposal.

USTA claims that "[t]he current interstate access structure, rates and rules have evolved little from the Commission's decisions of 1983," even though "rapidly evolving technologies, new market entrants and new procompetitive Commission policies have dramatically changed

the access environment."<sup>5</sup> According to USTA, the current access charge rules prevent LECs from responding to competition, by delaying the introduction of new services<sup>6</sup> and prohibiting "customized and/or packaged services."<sup>7</sup>

USTA consequently recommends that the Commission reform its access charge regime to advance seven fundamental goals: promoting universal service, promoting the introduction of new services and technologies, supporting "balanced" competition in access markets by treating all competitors equally, promoting efficient use of the network through economic pricing, encouraging continued development of an advanced national telecommunications infrastructure through depreciation reform, preventing unreasonable discrimination while permitting "price differentiation," and minimizing regulatory burdens.<sup>8</sup> To this end, USTA proposes the following approach:

First, access services would be re-classified into four categories: Public Policy (including lifeline assistance, common line charges, long term support, USF, and other explicit subsidies), Transport, Switching, and Other. LECs would be free to establish rate elements within each of these

---

<sup>5</sup> Petition at 7.

<sup>6</sup> Id. at 9-10.

<sup>7</sup> Id. at 11.

<sup>8</sup> Id. at 14-20.

access categories, and would not have to allocate costs among rate elements except for the End User Common Line charge.

Second, wire centers would be classified into a three-tier market structure, depending upon the degree of competition, with different degrees of regulation in each tier:

- Initial Market Areas are those without services that are substitutable for LEC access. In IMAs, LECs would be allowed to reduce rates by ten percent per year or raise rates by five percent per year relative to the Price Cap Index under streamlined review.

- Transitional Market Areas are regions where there are services that are substitutable for LEC access. Any wire center where there is expanded interconnection would be classified as a TMA, and all services originating or terminating within such a wire center would be in the TMA. In a TMA, LECs could engage in contract pricing and could reduce rates for service categories by up to 15 percent per year relative to the price cap under streamlined review.

- Competitive Market Areas are those regions where (1) customers representing 25 percent of the demand for LEC interstate access or 20 percent of the demand for total access have available an alternative source of supply, and (2) customers representing 25 percent of the demand for LEC interstate access or 15 percent of the demand for total interstate access seek to reduce their access costs through



the solicitation of bids, use of private networks, or construction of their own facilities. In a CMA, the LEC will enjoy absolute pricing flexibility.

Third, price cap sharing requirements would be eliminated, and rules regarding introduction of new services would be relaxed. Such services could be offered on 45 days' notice in IMAs, 21 days' notice in TMAs, and 14 days' notice in CMAs.

B. There Is No Basis for Adopting USTA's Proposal.

USTA's proposal rests on several explicit and implicit assumptions:

- That the access marketplace is monolithic, with no significant distinctions between special access and switched access services,<sup>9</sup> and that barriers to access competition have been eliminated, causing the access market to be "up for grabs."<sup>10</sup>
- That further deregulation of the LECs is necessary to allow them to compete fairly.<sup>11</sup>
- That access competition is an end in itself, which automatically will produce consumer benefits.<sup>12</sup>

None of these assumptions is valid.

---

<sup>9</sup> See, e.g., USTA Petition at 20-21.

<sup>10</sup> Id. at 8-9.

<sup>11</sup> See, e.g., id. at 9-12.

<sup>12</sup> This assumption pervades USTA's Petition. USTA nowhere recognizes the interplay between access competition, local service competition (or the lack thereof), and long distance competition. Nor, with respect to the switched access market, does USTA acknowledge that competition will benefit consumers only to the extent it assures continued, robust long distance competition.

1. Crucial Distinctions Between Switched and Special Access Have Important Implications for Access Reform.

USTA's attempt to blur the line between switched and special access may be convenient to its argument, but does not reflect marketplace realities. Regardless of the technology used to provide these offerings, there are crucial distinctions between the special and switched access submarkets, and these distinctions have important implications for the development of a coherent access reform strategy.

The special access market is essentially a retail market, consisting of customers who have sufficient calling volumes to justify circuits configured solely for their long distance traffic. Because special access circuits perform a single task, the customer's decision to purchase this service can be separated from its decisions regarding other services. Put another way, special access is separable from local telephone service, and special access competition arguably can develop even in the absence of local telephone competition. Moreover, the special access market is predominantly interstate, so the Commission has relatively unfettered authority to promote special access competition.

In contrast, the switched access market is a wholesale market. Switched access is used to connect the vast majority of customers, business as well as residential, to their long distance carrier using the public switched network. For

these customers, "access" is not a distinct, separable service; rather, it is determined by the customer's threshold decision to subscribe to local telephone service, since access is accomplished by the local service provider.

The primary consequence of this distinction is that the Commission has relatively limited ability to promote true switched access competition. Indeed, the recent decision to allow switched access collocation is a broad title for a relatively limited action. Although IXC's and CAP's soon may be able to collocate facilities used for interoffice transport, IXC's must still rely on the LEC to connect them to end users. The expanded interconnection decision does nothing to change this equation: true switched access competition will occur only when IXC's can use someone other than the LEC to reach end users.

To provide a complete switched access alternative, a CAP's network must attract a large number of subscribers who have relatively modest long distance calling needs. The CAP will have to bundle "access" with local service to build its subscriber base and carry the full complement of exchange traffic to achieve scale economies to compete with the LEC. Because most of the service categories that the CAP must offer are jurisdictionally intrastate, achieving the federal goal of promoting interstate access competition requires that the states also consistently favor local exchange entry and competition. Consequently, federal access reform based on

the assumption of switched access competition cannot proceed unless done in parallel with state reforms aimed at promoting local service competition and rationalizing the federal and state access charge regimes.

In sum, the access market is not "up for grabs," as USTA would have the Commission believe. Certainly, the special access submarket is becoming increasingly competitive in some areas of the country, and groundwork has been laid to expand competitive options for interoffice transport. True switched access competition, however, is years away.

2. Further Deregulation Is Not Necessary  
To Allow the LECs To Compete.

USTA's call for further deregulation ignores two key facts: First, there is a profound mismatch between the relief requested and the actual state of competition. Second, contrary to USTA's characterization, the LECs already have received considerable pricing flexibility that is more than sufficient to enable them to compete.

The mismatch between relief sought and competition faced results from USTA's effort to blur the lines between switched and special access. Competition will emerge first and strongest in the special access submarket, for the reasons discussed in the previous section of this Opposition. With respect to special access services, of course, the LECs already are free to offer volume and term discounts, engage in zone density pricing, and create new rate elements without

obtaining a waiver from the Commission. No further relief is necessary.

In the switched access submarket, competition has not even begun to emerge -- and, as discussed above, the only competition that will surface in the near future is for the limited subset of inter-office transport. In this context, the radical price and earnings deregulation sought by USTA is insupportable. Indeed, even if market conditions change, USTA's proposal is overreaching. Merely to state the relief requested -- complete deregulation of interstate access services when customers representing eighty percent of total interstate access demand have no alternative source of supply -- is to demonstrate that it cannot be justified.

Finally, USTA ignores the substantial deregulation that has been extended to the LECs. Price cap regulation already grants complete pricing flexibility for each access service within a wide band. As noted above, the LECs may offer deaveraged rates and volume and term discounts for special access services. And USTA does not even discuss the tremendous additional flexibility adopted in the Switched Transport Expanded Interconnection Order, including zone density pricing, volume and term discounts for entrance facilities, and even volume discounts for interoffice transport, once certain minimal conditions have been met.<sup>13</sup>

---

<sup>13</sup> As CompTel has explained elsewhere, the decision to allow volume discounts for interoffice transport is  
(continued...)

Not satisfied with this rapid relaxation of regulatory constraints, USTA seeks nothing less than the ability to engage in wholesale price discrimination. The Commission already has properly rejected such requests, and there is no procedural or substantive basis for re-visiting this issue in the context of USTA's Petition.

3. Access Competition Is Not An End In Itself.

In the wholesale switched access market, regulatory reform cannot be considered without addressing its effect on long distance competition. This is true for two reasons.

First, consumers do not buy switched access services, so they do not benefit directly from access competition. Competition in the wholesale market will produce no consumer benefits unless all providers of the retail service may obtain the wholesale service on a non-discriminatory, cost-effective basis.

Second, while the IXC pays for switched access, the choice of local service provider is made by the end user. If meaningful competition for the IXC's access business is to emerge, the end user's decision as to its local phone company must be separated from the long distance carrier's choice of access provider. Otherwise, the long distance industry,

---

<sup>13</sup>(...continued)  
antithetical to fair long distance competition and economically irrational. See CompTel Petition for Reconsideration, CC Docket No. 91-141 (Transport) Phase I, filed October 18, 1993.

which today encompasses hundreds of providers, will become as concentrated as the access market, which is unlikely to have more than two or three providers in any exchange.

\* \* \*

Since divestiture, the availability of local access services on equal terms for all IXC's has enabled long distance competition to develop without duplicating the local telephone network. Access reform must retain this basic structure as additional local networks evolve. In the concluding section of this Opposition, CompTel will discuss elements of an access reform policy that will achieve this goal.

### III. ACCESS REFORM MUST PROMOTE CONTINUED LONG DISTANCE COMPETITION.

Access reform must not be a short-cut to deregulation of the LECs. Rather, it must proceed from a careful analysis of competitive conditions in the long distance, access, and local markets to an end result that benefits consumers. Outlined below are CompTel's recommendations for approaching access reform in a rational manner:

Access reform must recognize the relationship between switched access and local competition. Until IXC's can reach their customers without using LEC facilities, there will be no true switched access competition. Consequently, state and federal regulators must recognize that deregulation of LEC

access pricing must await the development of effective local competition.

Access reform must assure that robust retail competition is not sacrificed to achieve more limited wholesale competition. The competitive advances of the last decade will be eliminated if the retail long distance market is recombined with exchange access service. Bundling the two services would lead to an industry structure where the degree of concentration would match the less competitive of the two markets. To avoid such a result, access policy should require that:

- An unbundled wholesale access service underlie all interstate and intrastate LEC-provided retail services that extend beyond the flat-rate local calling area.
- All LEC-provided retail services obtain access from the LEC's wholesale operations under the same tariffed terms and conditions of service offered to other retail service providers.
- Volume discounts be strictly justified to avoid granting an unearned advantage to incumbent or dominant providers of retail services -- and be prohibited where without economic foundation, as in the case of interoffice transport.
- Customers be permitted separately to select local and interexchange providers using 1+ presubscription for interLATA and intraLATA services.

These basic objectives must be satisfied for long distance retail competition to continue once additional providers of wholesale local access services enter the market.

Access reform must recognize that certain market rules may need to be extended to CAPs in order to assure fair long



distance competition. Until interexchange carriers are able to choose a switched access service provider independently of the end user's choice of local service provider, they will be subject to the market power of the access carrier, whether CAP or LEC. To assure actual, as opposed to apparent, competition in the access market, CAPs as well as LECs should be required to unbundle long distance, access, and local services and offer customers the unrestricted ability to select their desired IXC.

Access reform must ensure that any necessary "contribution" to social subsidies is explicitly identified, determined to be reasonable, and recovered in a manner that is competitively neutral. Where public policy requires that particular users receive service at less than the full costs of providing that service, the extent of the subsidy should be specifically identified and judged to be reasonable. Mere assertions that a particular service subsidizes another service should not be credited in the absence of reliable data. Finally, the mechanism for recovering legitimate subsidy amounts should not distort competition. For example, any volume discounts must continue to recover a full subsidy contribution in order to avoid unfairly rewarding incumbency or reinforcing a dominant position in the marketplace.

IV. CONCLUSION

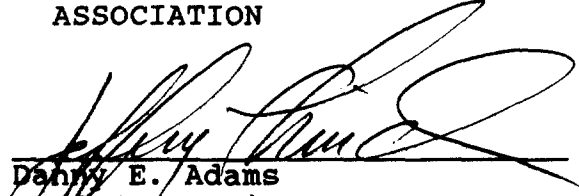
For the foregoing reasons, CompTel urges the Commission to reject USTA's call for fundamental deregulation in the guise of access reform. Any rulemaking adopted to propose restructuring of the access charge regime must proceed consistently with the principles outlined above in order to assure that consumers benefit through continued robust competition in the long distance market.

Respectfully submitted,

COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION

By:

Genevieve Morelli  
Vice President and  
General Counsel  
COMPETITIVE  
TELECOMMUNICATIONS  
ASSOCIATION  
1140 Connecticut Ave., N.W.  
Suite 220  
Washington, D.C. 20036  
(202) 296-6650

  
Jeffrey S. Linder  
WILEY, REIN & FIELDING  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 429-7000

Its Attorneys

November 1, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 1993,  
I caused copies of the foregoing "Opposition of Competitive  
Telecommunications Association" to be mailed via first-class  
postage prepaid mail to the following:

Martin T. McCue  
Linda Kent  
United States Telephone Association  
900 19th Street, N.W.  
Suite 800  
Washington, DC 20006-2105

  
Bethany G. Smith